

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IRMA MARTINEZ, FELIPE MARTINEZ,
LARRY MUNN, and
LEE HUNT, *as personal representative
of the estate of Abel Portillo, deceased,*

Plaintiffs,

vs.

No. 1:17-cv-00922-KWR-JFR

CONTINENTAL TIRE THE AMERICAS,
LLC, *An Ohio Limited Liability Company*

Defendant.

ORDER TO SHOW CAUSE

THIS MATTER upon a *sua sponte* review of the docket as to Mr. Prieto's prosecution of his claims.

At the June 15, 2022, pretrial conference, the parties represented to the Court that the claims brought by Mr. Prieto had been settled. Therefore, Mr. Prieto did not participate in the bench trial. However, at the trial, defense counsel stated that Mr. Prieto was unavailable, they were unable to contact him, and a release was not yet signed. *See Doc. 723, Trial Tr. at 1146.* If Mr. Prieto has settled his claims, the Court **DIRECTS** Mr. Prieto to file his closing documents **within fourteen (14) days of the entry of this order.**

Alternatively, if Mr. Prieto's claims have not been settled, Mr. Prieto **SHOULD SHOW CAUSE** why his claims should not be dismissed without prejudice for failure to prosecute his claims **within fourteen (14) days of the entry of this order.** *See Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003) ("Rule 41(b) ... has long been interpreted to permit courts to dismiss

actions *sua sponte* for a plaintiff's failure to prosecute or comply with the ... court's orders.”). This case was filed on September 8, 2017. Mr. Prieto obtained separate counsel, who entered his appearance on March 6, 2018. Although Mr. Prieto apparently participated in discovery, he has not participated in this case's extensive motions practice, or the July 2022 trial. Therefore, it appears several years have gone by without Mr. Prieto prosecuting his claims, at least as it appears on the Court's record. The Court finds this delay to be extraordinary. **If Mr. Prieto fails to respond to this order or fails to show cause why his claims should not be dismissed, the Court may dismiss his claims without prejudice and without further notice.**

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE